IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

WP(C).No. 7665 of 2006(K)

PETITIONERS:
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1. **S.LAKSHMI BAI, W/O.LATE K.V.S.GUPTA, KATTAYATTUPAMBA, NAGARAM AMSOM DESOM, 10/946, PALAYAM ROAD, CALICUT-1, KOZHIKODE DISTRICT.**

2. **K.S.SIVAKUMAR, S/O.LATE K.V.S.GUPTA, IN -DO- -DO-.**

3. **K.S.RAMESHKUMAR, S/O. -DO- IN -DO-.**

4. **K.S.SARAVANAKUMAR, S/O. OF -DO- IN -DO-**

BY ADV. SRI.S.V.BALAKRISHNA IYER
SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN

RESPONDENTS:
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1. **P.C.INDIRA, W/O.LATE T.S.PADMANABHA PILLAI, PALAPPARAMBA HOUSE, KASABA AMSOM, KARAYAKUNNU DESOM, STATE BANK COLONY ROAD, KOTTOOLI P.O., KUTHIRAVATTOM, CALICUT-673 016.**

2. **SHEENA, D/O.P.C.INDIRA, RESIDING IN -DO- --DO--.**

BY ADV. SRI.T.KRISHNAN UNNI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 7665/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE APPLICATION E.A. 325/90 MUNSIFF'S COURT -1, KOZHIKODE DATED 2/08/90.

EXT.P2. COPY OF THE ORDER IN E.A. NO. 325/90 IN EP NO. 293/88 IN RCP NO. 89/80, MUNSIFF COURT-I, KOZHIKODE.

EXT.P3. COPY OF THE ORDER OF THIS COURT IN CRP NO. 2454/00 30/09/05.

EXT.P4. COPY OF THE MEMORANDUM OF CIVIL REVISION PETITION IN CRP NO. 1/2005 DIST. COURT, KOZHIKODE.

EXT.P5. COPY OF THE ORDER OF THE DIST. JUDGE, KOZHIKODE IN CRP NO. 1/2005 DT. 31/1/2006.

RESPONDENT'S EXHIBITS **NIL.**

True copy

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K.BALAKRISHNAN NAIR &

T.R.RAMACHANDRAN NAIR, JJ.

W.P.(C) NO. 7665 OF 2006-K

Dated 31st October, 2007.

JUDGMENT

Balakrishnan Nair, J.

The petitioners are the legal heirs of the original tenant. The respondents are the legal heirs of the original landlord. This writ petition under Article 227 of the Constitution of India is filed, challenging Ext.P5 order of the Rent Control Appellate Authority under Section 14 of the Kerala Buildings (Lease and Rent Control) Act.

2. The brief facts of the case are the following: The original tenant was in possession of two rooms along with the upstair portion, a lean-to behind them and also a godown, under a rent deed executed in 1928. The above items belonged to the family of the respondents. There was a partition in the family in 1954 and Ext.A1 is the partition deed. The said two rooms along with the upstair portion and the lean-to behind them were allotted to the share of the original landlord, according to the respondents herein. According to the petitioners only the two rooms facing the Palayam

road along with the upstair portion without the lean-to were allotted to the share of the original landlord. They pointed out that the lean-to was allotted to the share of one Mr.Krishna Pillai, who is the brother of the original landlord.

3. The landlord moved for eviction of the said two rooms. Eviction was ordered by the Rent Controller, which was affirmed by the appellate authority, this Court and the Apex Court. The landlord filed execution petition. The tenant offered resistance in relation to the delivery of the lean-to portion of the building. The obstruction was removed and delivery was effected. The petitioners herein filed an application for re-delivery before the executing court, contending that the demised premises cover only the two rooms. The lean-to behind them is not part of it. So, more than what is claimed in the Rent Control Petition has been delivered to the landlord. The executing court rejected the application. The petitioners herein filed a revision petition before the appellate authority, which is authorised to exercise the powers of revision in relation to orders passed in execution. The revision was also dismissed. Hence this Writ Petition under Article 227 of the Constitution of India.

4. The learned counsel for the petitioners contended that the lean-to is nowhere mentioned in B schedule item No.2 of Ext.A1. So, as per the

partition deed, the landlord got only a portion of the building except the lean-to. As a matter of fact, the lean-to was in the possession of Mr.Krishna Pillai, brother of the original landlord, who sold it to one Mr.Abul Kader. The original tenant had entered into an agreement for sale with the said Abul Kader and on the strength of it, he was in possession of the lean-to. But, the appellate authority wrongly found that the lean-to is also part of the tenanted premises. The learned counsel for the petitioners pointed out that the petition schedule clearly gives the measurements. The measurement tallies exactly with the physical measurements of the two rooms in the front portion of the building facing Palayam road. The respondents on the other hand would point that all the rooms in the building have lean-to behind them. But while allotting the rooms in the ground floor, there was no mention about the lean-to in the partition deed. Even then the respective lean-tos were treated as part of the main rooms. The learned counsel for the respondents pointed out that in Ext.A1 the southern boundary of the two rooms in the ground floor allotted to the landlord was shown as open space. Similarly, the northern boundary of the godown allotted to Mr.Krishna Pillai was also shown as open space. The said recitals in the partition deed fully support the case of the landlord that the lean-to behind the rooms was part of the said two rooms.

5. We notice that the findings of the executing court as well as the revisional authority are concurrent. The appellate authority, for rejecting the revision, relied on the aforementioned circumstances pointed out by the respondents herein concerning the southern boundary of the demised room and the northern boundary of the property of Mr.Krishna Pillai. Those boundaries are shown as vacant land. The said recital is one of the circumstances, which was relied on by the District Judge, who rejected the contention of the petitioners.

6. Secondly, the appellate authority also noticed that there were six rooms in the ground floor with lean-tos behind them. But, there is no mention about the lean-to in relation to any of the rooms, in Ext.A1. Therefore, the non-mentioning of the lean-to in Ext.A1 cannot be pressed into service, to show that the same was not the subject-matter of the partition. Mainly relying on these two circumstances, the appellate authority rejected the claim of the petitioners herein. We are of the view that the said finding of the appellate authority is certainly a plausible finding on the facts and materials before it. It is normally difficult to believe that the lean-to behind a room which forms an integral part of the front room/rooms has been allotted to a different sharer, to which there is no independent access from the lane on the eastern side or which does not have any independent

door number. So, we fully concur with the reasoning and findings of the appellate authority.

In the result, the writ petition fails and it is dismissed.

K.BALAKRISHNAN NAIR, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Nm/